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ATTACHMENT A

**SELECTED PROVISIONS OF
CHAPTER 364
FLORIDA STATUTES (1995)**

CHAPTER 364

TELECOMMUNICATIONS COMPANIES

PART I GENERAL PROVISIONS (ss. 364.01-364.503)

PART II EDUCATION FACILITIES INFRASTRUCTURE IMPROVEMENT
(ss. 364.506-364.516)

PART I			
GENERAL PROVISIONS			
364.01	Powers of commission, legislative intent.	364.17	Forms of reports, accounts, records, and memoranda.
364.015	Injunctive relief.	364.18	Inspection of accounts and records of companies.
364.016	Travel costs.	364.183	Access to company records.
364.02	Definitions.	364.185	Investigations and inspections; power of commission.
364.025	Universal service.	364.19	Telecommunications service contracts; regulation by commission.
364.0251	Competitive providers of local service; implementation of consumer information program required.	364.24	Penalty for making telephone message or customer account information known.
364.03	Rates to be reasonable; performance of service; maintenance of telecommunications facilities.	364.245	Discontinuation of telecommunications service used for unlawful purpose.
364.035	Rate fixing; criteria service complaints.	364.27	Powers and duties as to interstate rates, fares, charges, classifications, or rules of practice.
364.0361	Local government authority; nondiscriminatory exercise.	364.285	Penalties.
364.037	Telephone directory advertising revenues.	364.30	Telecommunications companies; points of connection.
364.04	Schedules of rates, tolls, rentals, contracts, and charges; filing; public inspection.	364.32	Definitions applicable to ss. 364.33, 364.337, 364.345 and 364.37.
364.05	Changing rates, tolls, rentals, contracts, or charges.	364.33	Certificate of necessity prerequisite to construction, operation, or control of telecommunications facilities.
364.051	Price regulation.	364.335	Application for certificate.
364.052	Regulatory methods for small local exchange telecommunications companies.	364.336	Regulatory assessment fees.
364.055	Interim rates; procedure.	364.337	Alternate local exchange telecommunications companies; intrastate interexchange telecommunications services; certification.
364.057	Experimental and transitional rates and services.	364.3375	Pay telephone service providers.
364.058	Limited proceedings.	364.3376	Operator services.
364.06	Joint rates, tolls, contracts, or charges.	364.3381	Cross-subsidization.
364.063	Rate adjustment orders.	364.3382	Disclosure.
364.07	Joint contracts; intrastate interexchange service contracts.	364.339	Shared tenant service; regulation by commission; certification; limitation as to designated carriers.
364.08	Unlawful to charge other than schedule rates or charges; free service and reduced rates prohibited.	364.345	Certificates; territory served; transfer.
364.09	Giving rebate or special rate prohibited.	364.37	Controversy concerning territory to be served; powers of commission.
364.10	Undue advantage to person or locality prohibited; exception.	364.381	Judicial review.
364.14	Readjustment of rates, charges, tolls, or rentals; order or rule compelling facilities to be installed, etc.	364.385	Saving clauses.
364.15	Compelling repairs, improvements, changes, additions, or extensions.	364.386	Reports to the Legislature.
364.16	Connection of lines and transfers; local interconnection; telephone number portability.	364.501	Telecommunications company underground excavation damage prevention.
364.161	Unbundling and resale.	364.502	Video programming; capacity for public use.
364.162	Negotiated prices for interconnection and for the resale of services and facilities; commission rate setting.	364.503	Merger or acquisition.
364.163	Network access services.		
		364.01	Powers of commission, legislative intent.—
		(1)	The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

(2) It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. However, the provisions of this chapter shall not affect the authority and powers granted in s. 166.231(9) or s. 337.401.

(3) The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce.

(4) The commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

(c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

(d) Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local exchange telecommunications companies.

(e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.

(f) Eliminate any rules and/or regulations which will delay or impair the transition to competition.

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommu-

nications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

History.—ss. 1-4, ch. 6186, 1911; ss. 1-8, ch. 6187, 1911; s. 1, ch. 6625, 1913; RGS 4363; CGL 6357; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 67-541; s. 3, ch. 76-166; s. 1, ch. 77-457; ss. 1, 32, ch. 80-36; s. 2, ch. 81-318; s. 25, ch. 83-218; ss. 6, 7, ch. 88-163; ss. 1, 48, 49, ch. 90-244; s. 4, ch. 91-429; s. 5, ch. 95-403.

364.015 Injunctive relief.—The Legislature finds that violations of commission orders or rules, in connection with the impairment of a telecommunications company's operations or service, constitute irreparable harm for which there is no adequate remedy at law. The commission is authorized to seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order. Such remedies shall be in addition to and supplementary to any other remedies available for enforcement of agency action under s. 120.69 or the provisions of this chapter. The commission shall establish procedures implementing this section by rule.

History.—s. 1, ch. 93-35.

364.016 Travel costs.—The commission has the authority to assess a telecommunications company for reasonable travel costs associated with reviewing the records of the telecommunications company and its affiliates when such records are kept out of state. The telecommunications company may bring the records back into the state for review.

History.—s. 2, ch. 93-35.

364.02 Definitions.—As used in this chapter:

(1) "Alternative local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995.

(2) "Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

(3) "Commercial mobile radio service provider" means a commercial mobile radio service provider as defined by and pursuant to 47 U.S.C. ss. 153(n) and 332(d).

(4) "Commission" means the Florida Public Service Commission.

(5) "Corporation" includes a corporation, company, association, or joint stock association.

(6) "Local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

(7) "Monopoly service" means a telecommunications service for which there is no effective competition, either in fact or by operation of law.

(8) "Nonbasic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163.

(9) "Operator service" includes, but is not limited to, billing or completion of third-party, person-to-person, collect, or calling card or credit card calls through the use of a live operator or automated equipment.

(10) "Operator service provider" means a person who furnishes operator service through a call aggregator.

(11) "Service" is to be construed in its broadest and most inclusive sense.

(12) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include an entity which provides a telecommunications facility exclusively to a certificated telecommunications company, a commercial mobile radio service provider, a facsimile transmission service, a private computer data network company not offering service to the public for hire, or a cable television company providing cable service as defined in 47 U.S.C. s. 522. However, each commercial mobile radio service provider shall continue to be liable for any taxes imposed pursuant to chapters 203 and 212 and any fees assessed pursuant to s. 364.025.

(13) "Telecommunications facility" includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state.

*History.—*s. 2, ch. 8625, 1913; FGS 4384; OGL 6354; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 1, ch. 66-451; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 32, ch. 80-36; s. 2, ch. 81-318; s. 1, ch. 84-215; ss. 6, 7, ch. 89-163; ss. 2, 48, 49, ch. 90-244; s. 4, ch. 91-429; s. 6, ch. 95-403.

364.025 Universal service.—

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. For a period of 4 years after January 1, 1996, each local

exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be implemented by no later than January 1, 1996, and shall be applied in a manner that ensures that each alternative local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each alternative local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) In the event any party, prior to January 1, 2000, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4) Prior to the expiration of this 4-year period, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on alternative local exchange telecommunications companies shall terminate. The commission is directed to research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature what the commission determines to be a reasonable and fair mechanism for providing to the greatest number of customers basic local exchange telecommunications service at an affordable price. The recommendation shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives no later than January 1, 1997. The recommendation shall address, at minimum, the following:

(a) Whether a subsidy or some other mechanism is necessary.

(b) If a subsidy is necessary, the minimum amount needed and a mechanism to collect the required amount.

(c) If a subsidy is necessary, a mechanism to distribute the subsidy funds.

(d) If a subsidy is necessary, from which providers of telecommunications services the subsidy should be collected.

(e) Whether the deaveraging of basic local exchange telecommunications service rates should be required to more appropriately reflect the cost of providing service.

(f) Whether targeted subsidies are more appropriate than average basic local exchange telecommunications service pricing for maintaining universal service objectives.

(5) After January 1, 2000, an alternative local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that alternative local exchange telecommunications company. Upon petition of an alternative local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the alternative local exchange company. The commission may establish the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the alternative local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations and shall set up any mechanism needed to aid such company in carrying out these duties.

(6) By October 1, 1996, the Office of the Public Counsel shall submit a report to the commission on whether the interim mechanism should continue to serve as a means for assisting in the funding of universal service objectives and carrier-of-last-resort obligations or if a different mechanism is needed.

History.—s. 7, ch. 95-403.

Note.—The word "be" was inserted by the authors.

Note.—This reference is erroneous. Section 364.051, as created by s. 3, ch. 95-403, includes four subsections containing paragraphs designated as "(c)".

364.0251 Competitive providers of local service; implementation of consumer information program required.—By January 1, 1996, the commission shall implement a consumer information program to inform subscribers of the possibility under the law of competitive providers of local exchange telecommunications services, their rights as customers of these alternative providers, the commission's regulatory authority over the alternative providers, and any other information the commission deems appropriate. The commission may, pursuant to this program, require all companies providing local exchange telecommunications services to provide such information in the form of a bill insert.

History.—s. 12, ch. 95-403.

364.03 Rates to be reasonable; performance of service; maintenance of telecommunications facilities.

(1) All rates, tolls, contracts, and charges of, and all rules and regulations of, telecommunications companies for messages, conversations, services rendered, and equipment and facilities supplied, whether such message, conversation, or service is to be performed over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable, and sufficient, and the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner. The telecommunications facilities furnished by a telecommunications company shall be safe and kept in good condition and repair; and its service shall be modern, adequate, sufficient, and efficient.

(2) Every telecommunications company operating in this state shall provide and maintain suitable and adequate buildings and telecommunications facilities therein, or connected therewith, for the accommodation, comfort, and convenience of its patrons and employees.

(3) Every telecommunications company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper telecommunications facilities and connections for telecommunications services and furnish telecommunications service as demanded upon terms to be approved by the commission.

History.—s. 3, ch. 8825, 1913; AGS 4366; CGL 6366; s. 3, ch. 76-188; s. 1, ch. 77-457; ss. 3, 32, ch. 80-38; s. 2, ch. 81-318; ss. 6, 7, ch. 88-163; ss. 3, 48, 49, ch. 90-244; s. 4, ch. 91-429.

364.035 Rate fixing; criteria service complaints.—

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all telecommunications companies under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the telecommunications facilities provided and the services rendered, including energy conservation and the efficient use of alternative energy resources; the value of such service to the public; and the ability of the telecommunications company to improve such service and facilities. However, a telecommunications company may not be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration of a reasonable rate of return, the commission shall hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals. However, service complaints may not be taken up or considered by the commission at any proceedings involving rates, charges, fares, tolls, or rentals unless the telecommunications company has been given at least 30 days' written notice thereof, and any proceeding may be extended, prior to final determination, for such period. Any order issued by the commission under this section may not be made effective until a reasonable time, considering the factor of growth in the community and availability of necessary equipment, has been given the telecommunications company involved to correct the cause of service complaints.

(3) A change may not be made in any rate, toll, rental, contract, or charge prescribed by the commission without its consent or without a hearing, if requested by a substantially affected party prior to the date the rates go into effect. A hearing may be held after a change in rates goes into effect, provided that, in the case of an increase in rates, the portion of the rates reflecting the difference between the previous rate and the new rate is subject to refund pending the outcome of the hearing.

(4) Nothing contained in this section shall require the commission to hold a hearing with respect to a rate change within a previously authorized range of rates.

(5) Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the telecommunications company requesting such increase, within 60 days, a reason or written statement of good cause for withholding its consent. Such consent may not be withheld for a period longer than 8 months after the date of filing the new schedules. The new rates or any portion not consented to may, at the option of the company, go into effect under bond or corporate undertaking at the end of such period, but the commission shall, by order, require such telecommunications company to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid and, upon completion of hearing and final decision in such proceeding, shall by further order require such telecommunications company to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the telecommunications company shall be refunded or disposed of by the telecommunications company as the commission may direct; however, such funds may not accrue to the benefit of the telecommunications company. The commission shall take final commission action in the docket and enter its final order within 12 months after the commencement date for final agency action. As used in this section, "commencement date for final agency action" means the date upon which it has been determined by the commission or its designee that the telecommunications company has filed with the clerk the minimum filing requirements as established by rule of the commission. Within 30 days after receipt of the application, rate request, or other written document for which the commencement date for final agency action is to be established, the commission or its designee shall either determine the commencement date for final agency action or issue a statement of deficiencies to the applicant, specifically listing why the applicant has failed to meet the minimum filing requirements. The statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the commencement date for final agency action shall be promptly established as provided in this section. Thereafter, within 15 days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the

commission or its designee shall either determine the commencement date for final agency action or specifically enumerate in writing why the requirements have not been met, in which case this procedure shall be repeated until the commencement date for final agency action is established. When the commission initiates a proceeding, the commencement date for final agency action shall be the date upon which the order initiating the proceeding is issued.

History.—s. 5, ch. 6525, 1913; RGS 4397; CGL 6361; s. 3, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 142, ch. 79-400; ss. 5, 32, ch. 80-36; s. 213, ch. 81-250; s. 2, ch. 81-318; s. 2, ch. 83-73; ss. 6, 7, ch. 89-163; ss. 8, 48, 49, ch. 90-244; s. 4, ch. 91-429.

364.051 Price regulation.—

(1) SCHEDULE.—Notwithstanding any other provisions of this chapter, the following local exchange telecommunications companies shall become subject to the price regulation described in this section on the following dates:

(a) For a local exchange telecommunications company with 100,000 or more access lines in service as of July 1, 1995, such company may file with the commission a notice of election to be under price regulation effective January 1, 1996, or when an alternative local exchange telecommunications company is certificated to provide local exchange telecommunications services in its service territory, whichever is later.

(b) Effective on the date of filing its election with the commission, but no sooner than January 1, 1996, any local exchange telecommunications company with fewer than 100,000 access lines in service on July 1, 1995, that elects pursuant to s. 364.052 to become subject to this section.

(c) Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

(2) BASIC LOCAL TELECOMMUNICATIONS SERVICE.—Price regulation of basic local telecommunications service shall consist of the following:

(a) Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999. However, the basic local telecommunications service rates of a local exchange telecommunications company with more than 3 million basic local telecommunications service access lines in service on July 1, 1995, shall not be increased prior to January 1, 2001.

(b) Upon the date of filing its election with the commission, the rates for basic local telecommunications service of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped as stated in paragraph (a).

(c) There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed.

(3)(a) By December 1, 1997, the commission shall report and recommend on an exchange by exchange basis to the Legislature as to whether there is a need to extend the caps provided for in paragraphs (2)(a) and

(b) for basic local telecommunications service prices, or whether there is some other means, excluding rate of return regulation, to ensure reasonable and affordable rates for basic local telecommunications service.

(b) In making the determination as to whether price caps are needed to ensure reasonable and affordable rates for basic local telecommunications service provided by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service on July 1, 1995, the commission shall consider whether the level of competition in the area justifies the elimination of price caps.

(c) The Legislature shall review the commission's report submitted pursuant to paragraph (3)(a) and determine whether there is a continuing need for basic local telecommunications service prices to remain capped. Unless the Legislature acts to the contrary, the caps shall remain in place in any exchange in which the Legislature determines that the level of competition does not justify the elimination of price caps for an additional 2 years or until the commission during that 2-year period determines that the level of competition in the exchange justifies the elimination of price caps.

(4) In the event that it is determined that the level of competition justifies the elimination of price caps in an exchange served by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service, or at the end of 5 years for any local exchange telecommunications company, the local exchange telecommunications company may thereafter on 30 days' notice adjust its basic service prices once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce. In the event any local exchange telecommunications company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation the company may petition the Legislature.

(5) Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II. The commission shall act upon any such petition within 120 days of its filing.

(6) **NONBASIC SERVICES.**—Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for

each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid. However, for purposes of this subsection, the prices of:

1. A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and

2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,

shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999; provided, however, that a petition to increase such rates may be filed pursuant to subsection (5) utilizing the standards set forth therein. There shall be a flat-rate pricing option for multi-line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

(b) The commission shall have continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

(c) The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

History.—s. 9, ch. 95-403

364.052 Regulatory methods for small local exchange telecommunications companies.—

1) For purposes of this section, a small local exchange telecommunications company is a local

be established by the procedure set forth in s. 364.162 and shall be equally applicable to both the local exchange telecommunications company and its affiliates in the provision of their own service, until such time as the local exchange telecommunications company petitions the commission and the commission determines otherwise, but in no event prior to July 1, 1999.

(2) Other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities except those the commission may determine are reasonable. The local exchange telecommunications company's currently tariffed, flat-rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide inter-LATA services and video programming, but in no event before July 1, 1997. In no event shall the price of any service provided for resale be below cost.

(3) Only after an alternative local exchange telecommunications company has been determined to be a carrier of last resort shall such company, upon request by another telecommunications provider, be required, for purposes of resale, to unbundle its local exchange services, network features, functions and capabilities, including its local loop, to the extent such unbundling is technically and economically feasible. The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days. The prices shall not be below cost.

*History.—*s. 15, ch. 95-403.

364.162 Negotiated prices for interconnection and for the resale of services and facilities; commission rate setting.—

(1) Any party who, on July 1, 1995, has an application on file with the commission to become an alternative local exchange telecommunications company shall have until August 31, 1995, to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities.

(2) If a negotiated price is not established by August 31, 1995, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the commission before their effective date. The commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions.

(3) In the event that the commission receives a single petition relating to either interconnection or resale of services and facilities, it shall vote, within 120 days following such filing, to set nondiscriminatory rates, terms, and conditions, except that the rates shall not be below cost. If the commission receives one or more petitions relating to both interconnection and resale of services

and facilities, the commission shall conduct separate proceedings for each and, within 120 days following such filing, make two separate determinations setting such nondiscriminatory rates, terms, and conditions, except that the rates shall not be below cost.

(4) In setting the local interconnection charge, the commission shall determine that the charge is sufficient to cover the cost of furnishing interconnection.

(5) The commission shall ensure that, if the rate it sets for a service or facility to be resold provides a discount below the tariff rate for such service or facility which appropriately reflects the local exchange telecommunications company's avoidance of the expense and cost of marketing such service or facility to retail customers, such rate must not be below cost. The commission shall also assure that this rate is not set so high that it would serve as a barrier to competition.

(6) An alternative local exchange telecommunications company that did not have an application for certification on file with the commission on July 1, 1995, shall have 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. If a negotiated price is not established after 60 days, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. The commission shall have 120 days to make a determination after proceeding as required by subsection (3).

(7) Prior to July 1, 1999, the parties may negotiate a new local interconnection charge to be effective not earlier than July 1, 1999. If the parties cannot satisfactorily negotiate a new local interconnection charge, either party may petition the commission to resolve the matter. In the event any party, prior to July 1, 1999, believes that circumstances have changed substantially to warrant a different price for local interconnection, that party may petition the commission for a price change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

*History.—*s. 16, ch. 95-403.

364.163 Network access services.—For purposes of this section, "network access service" is defined as any service provided by a local exchange telecommunications company to a telecommunications company certificated under this chapter or licensed by the Federal Communications Commission to access the local exchange telecommunications network, excluding the local interconnection arrangements in s. 364.16 and the resale arrangements in s. 364.161. Each local exchange telecommunications company subject to s. 364.051 shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its network access services.

(1) Effective January 1, 1996, the rates for network access services of each company subject to this section

shall be capped at the rates in effect on July 1, 1995, and shall remain capped until January 1, 1999. Upon the date of filing its election with the commission, the network access service rates of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped for 3 years.

(2) After the termination of the caps imposed on rates by subsection (1) and after a local exchange telecommunications company's intrastate switched access rates reach parity with its interstate switched access rates, a company subject to this section may, on 30 days' notice, annually adjust any specific network access service rate in an amount not to exceed the cumulative change in inflation experienced after the date of the last adjustment, provided, however, that no such adjustment shall ever exceed 3 percent annually of the then-current prices. Inflation shall be measured by the changes in Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business, or successor publication, by the United States Department of Commerce.

(3) After the termination of the caps imposed on rates by subsection (1), a company subject to this section may, at any time, petition the commission for a network access service rate change to recover the cost of governmentally mandated projects or programs or an increase in federal or state income tax incurred after that date. The costs and expenses of the government program or project required in part II of this chapter shall not be recovered under this paragraph unless such costs and expenses are incurred in the absence of a bid and subject to carrier of last resort obligations as provided for in part II of this chapter. With respect to governmentally mandated projects and programs, such petition shall be acted upon no later than 90 days after the date of filing. A company subject to this section shall show the commission that the cost of a project or program is not recoverable either from the government mandating the project or program or from the beneficiaries of the project or program through user fees or other new revenue sources from the project or program, and to the extent that cost decreases resulting from the project or program are reflected as an offset to cost increases. A company subject to this section shall decrease its network access rates by amounts that reflect any federal or state income tax reduction. Nothing contained in this section shall allow any revisions in the rates, terms, and conditions for commercial mobile radio service access, which revisions are inconsistent with the requirements or methodologies of the Federal Communications Commission.

(4) A company subject to this section may choose to implement all or a portion of a rate increase allowed for network access service by subsections (1), (2), and (3). Notwithstanding subsections (1), (2), and (3), a company subject to this section may choose to decrease network service rates at any time, and decreased rates shall become effective upon 7 days' notice.

(5) Company-proposed changes to the terms and conditions for existing network access services in accordance with subsections (1), (2), (3), and (4) shall be

presumed valid and become effective upon 15 days' notice. Company-proposed rate reductions shall become effective upon 7 days' notice. Rate increases made by the local exchange telecommunications company shall be presumed valid and become effective on the date specified in the tariff, but in no event earlier than 30 days after the filing of such tariff. The commission shall have continuing regulatory oversight of local exchange telecommunications company-provided network access services for purposes of determining the correctness of any price increase resulting from the application of the inflation index and making any necessary adjustments, establishing reasonable service quality criteria, and assuring resolution of service complaints. No later than 30 days after the filing of such tariff, the commission may, with respect to determining the correctness of any price increase, vote, without hearing, the local exchange telecommunications company to hold subject to refund all revenues collected under the rate increase. Within 60 days after such order, the commission must make a determination either compelling a refund of all or part of such revenues or releasing them from such requirement.

(6) Any local exchange telecommunications company whose current intrastate switched access rates are higher than its interstate switched access rates in effect on December 31, 1994, shall reduce its intrastate switched access rates by 5 percent annually beginning October 1, 1996. Any such company shall be relieved of this requirement if it reduces such rates by a greater percentage by the relevant date or earlier, taking into account any reduction made pursuant to Florida Public Service Commission Order No. PSC 94-0172-FOF-TL. Upon reaching parity between intrastate and 1994 interstate switched access rates, no further reductions shall be required. Any telecommunications company whose intrastate switched access rate is reduced by this subsection shall decrease its customer long distance rates by the amount necessary to return the benefits of such reduction to its customers.

(7) Telecommunications company intrastate switched access and customer long distance rate reductions shall become effective on October 1 of each relevant year. Rate decreases proposed in tariff revisions filed by the telecommunications companies with the commission shall be presumed valid and become effective on October 1 of each relevant year.

(8) No later than 30 days after the filing of such tariff, the commission may, with respect to determining the correctness of any rate decrease, vote, without hearing, the telecommunications company to hold subject to refund all intrastate switched access or customer long distance rate revenues collected after the rate decrease. Within 60 days after such order, the commission must make a determination either compelling a refund of the appropriate part of such revenues or releasing all such revenues from such requirement.

(9) The commission shall have continuing regulatory oversight of intrastate switched access and customer long distance rates for purposes of determining the correctness of any rate decrease by a telecommunications company resulting from the application of this section and making any necessary adjustments to those rates.

establishing reasonable service quality criteria, and assuring resolution of service complaints.

History.—s. 17, ch. 95-403.

364.17 Forms of reports, accounts, records, and memoranda.—The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records, and memoranda to be furnished and kept by any telecommunications company whose facilities extend beyond the limits of this state, which are operated partly within and partly without the state, so that the reports, accounts, records, and memoranda show any information required by the commission concerning the business done, receipts, and expenditures appertaining to those parts of the facility within the state. The forms of any and all accounts, records, and memoranda prescribed by the commission to be kept by companies which are subject to the Act of Congress entitled "The Communications Act of 1934," and the acts amendatory thereof and supplemental thereto, shall conform, whenever in the opinion of the commission it is practicable, to the forms of accounts, records, and memoranda prescribed by the Federal Communications Commission.

History.—s. 18, ch. 6525, 1913; RGS 4410, CGL 6374; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 17, 32, ch. 80-36; s. 214, ch. 81-259; s. 2, ch. 81-318; ss. 6, 7, ch. 89-163; ss. 21, 48, 49, ch. 90-244; s. 4, ch. 91-429.

364.18 Inspection of accounts and records of companies.—

(1) The commission, or any person authorized by the commission, may inspect the accounts, books, records, and papers of any telecommunications company; however, any person, other than a commissioner, who makes a demand for inspection of the books and papers shall produce in writing his or her authority from the commission.

(2) The commission may require the filing of reports and other data by a telecommunications company or its affiliated companies, including its parent company, regarding transactions or allocations of common costs among the telecommunications company and such affiliated companies that affect regulated rates. The commission may also require such reports or other data necessary to ensure that a company's regulated rates do not subsidize the company's unregulated activities. Any reports required by this subsection shall be confidential and exempt from s. 119.07(1) to the extent that they qualify for such treatment pursuant to s. 364.183.

History.—s. 21, ch. 6525, 1913; RGS 4410, CGL 6374; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 17, 32, ch. 80-36; s. 2, ch. 81-318; ss. 6, 7, ch. 89-163; ss. 22, 48, 49, ch. 90-244; s. 4, ch. 91-429; s. 547, ch. 95-148.

364.183 Access to company records.—

(1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly

related to matters within the commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time. Upon request of the company or other person, any records received by the commission which are claimed by the company or other person to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Upon a showing by a company or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue an appropriate protective order designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the Office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding shall be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record shall be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this subsection.

(3) The term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

of the application, the extended area service, routes, or extended calling service shall be considered basic services and shall be regulated as provided in s. 364.051 for a company that has elected price regulation. Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to July 1, 1995, shall be initiated after July 1, 1995. Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the commission, be conducted in accordance with the law as it existed prior to January 1, 1996.

(3) Florida Public Service Commission Order No. PSC 94-0172-FOF-TL shall remain in effect, and BellSouth Telecommunications, Inc., shall fully comply with that order unless modified by the Florida Public Service Commission pursuant to the terms of that order. The order may not be modified to extend beyond December 31, 1997, except that the Florida Public Service Commission shall retain jurisdiction and all parties shall retain their rights under the agreement after December 31, 1997, solely for the purpose of effectuating the provisions of the order applicable to periods prior to January 1, 1998. The depreciation rates approved by the Florida Public Service Commission and in effect as of December 31, 1994, shall be used to calculate the earnings available for sharing for periods prior to January 1, 1998.

History.—s. 29, ch. 80-36; s. 2, ch. 81-318, ss. 5, 7, ch. 89-163; ss. 44, 48, 49, ch. 90-244; s. 4, ch. 91-429; s. 28, ch. 95-403.

364.386 Reports to the Legislature.—

(1) The commission shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives, on December 1, 1996, and on an annual basis thereafter, a report on the status of competition in the telecommunications industry and a detailed exposition of the following:

(a) The overall impact of local exchange telecommunications competition on the continued availability of universal service.

(b) The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.

(c) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

(d) The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

(e) What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand.

(f) Any other information and recommendations which may be in the public interest.

(2) The Office of Public Counsel is also directed to submit a report on competition in the telecommunications industry and on how the price regulation provisions

of s. 364.051 have benefited the rate payers and consumers of this state and any other information and recommendations which may be in the public interest.

History.—ss. 45, 49, ch. 90-244; s. 4, ch. 91-429; s. 29, ch. 95-403.

364.501 Telecommunications company underground excavation damage prevention.—All telecommunications companies with underground fiber optic facilities shall operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which shall be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work. It is the purpose of this section to aid the public by preventing the interruption of telecommunications company services resulting from damage to telecommunications company underground facilities, including fiber optic facilities.

History.—ss. 46, 49, ch. 90-244; s. 4, ch. 91-429.

364.502 Video programming; capacity for public use.—

(1) Each local exchange telecommunications company or alternative local exchange telecommunications company which provides video programming shall, prior to providing such programming, file with the commission a designation of reserve capacity for public, educational, or governmental use. The commission shall review the filed designation to determine whether such designation ensures that public education and public information programming are adequately available to the customers of such telecommunications company. The commission shall consider the following factors in determining whether the filed designation complies with the requirements of this chapter:

(a) Reservation and designation requirements provided by federal law, if any.

(b) The level of demand for such programming in a given service area.

(c) The barriers to providing such programming in the service area.

(d) The cost and availability of such programming in the service area.

(e) Other factors which the commission deems appropriate.

(2) Capacity pursuant to this subsection shall not be sold, resold, or otherwise transferred for money or other thing of value. The quality of capacity reserved pursuant to this subsection shall be equivalent to the best quality of available capacity of the local exchange telecommunications company which provides video programming in all respects.

History.—s. 25, ch. 95-403.

364.503 Merger or acquisition.—

(1) Before any local exchange telecommunications company merges with or acquires an ownership interest of greater than 5 percent in a cable television company in the certificated local exchange in which the local exchange telecommunications company provides basic local telecommunications services within this state, the local exchange telecommunications company shall give the Florida Public Service Commission and the Depart-

ment of Legal Affairs of the Office of the Attorney General 60 days' notice of the proposed closing of the merger or acquisition.

(2) Before any cable television company providing cable service as defined in 47 U.S.C. s. 522 merges with or acquires an ownership interest of greater than 5 percent in a local exchange telecommunications company in an area serviced by the cable television company within this state, the cable television company shall give the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General 60 days' notice of the proposed closing of the merger or acquisition.

History.—s. 30, ch. 95-403.

PART II

EDUCATION FACILITIES INFRASTRUCTURE IMPROVEMENT

- 364.506 Short title.
- 364.507 Legislative intent.
- 364.508 Definitions.
- 364.509 The Florida Distance Learning Network; creation; membership; organization; meetings.
- 364.510 Duties of the Board of Directors of the Florida Distance Learning Network.
- 364.511 Powers of the Board of Directors of the Florida Distance Learning Network.
- 364.512 Board of Directors of the Florida Distance Learning Network; executive director.
- 364.513 Annual report of the Florida Distance Learning Network; audits.
- 364.514 Educational Technology Grant Program.
- 364.515 Infrastructure investment.
- 364.516 Penalties.

364.506 Short title.—This part may be cited as the "Education Facilities Infrastructure Improvement Act."

History.—s. 31, ch. 95-403.

364.507 Legislative intent.—

(1) The Legislature finds that it is in the interest of the state to assure its citizens access to advanced telecommunications services since such access will complement the provision of educational and health care services, thus enhancing the health, safety, and welfare of Floridians. The Legislature further finds that the network should be available to residents of rural, suburban, and urban areas so that all citizens may benefit.

(2) It is the intent of the Legislature that all local exchange telecommunications companies, including those with less than 100,000 access lines in service which do not elect to be regulated under price regulation pursuant to s. 364.051, should be required to provide advanced telecommunications services to eligible facilities in the absence of a competitive bid to provide such services pursuant to s. 364.510(3). This obligation arises from the privileges granted such local exchange telecommunications companies under part I of this chapter.

(3) It is the intent of the Legislature to encourage competition among providers of telecommunications services to provide advanced telecommunications ser-

vices, as such competition will accelerate the deployment of advanced telecommunications services for the improvement of public education and public health services in the state.

(4) It is the intent of the Legislature to encourage joint ventures between telecommunications companies, cable companies, and other providers where such joint ventures accelerate, improve, or otherwise assist eligible facilities in receiving advanced telecommunications services.

History.—s. 31, ch. 95-403.

364.508 Definitions.—As used in this part:

(1) "Commission" means the Public Service Commission.

(2) "Network" means the Florida Distance Learning Network.

(3) "Telecommunications company" means any entity certified under this chapter to provide telecommunications service.

(4) "Cable company" means a cable television company providing cable service as defined in 47 U.S.C. s. 522.

(5) "Advanced telecommunications services" are defined as network-based or wireless services that provide additional communications capabilities enabling the use of applications such as distance learning, video conferencing, data communications, and access to internet.

(6) "Plan" means the Education Facilities Infrastructure Improvement Plan, a document that includes a needs assessment report and identifies telecommunications companies', cable companies', and other providers' present and projected deployment of technologies necessary for delivery of advanced telecommunications services to eligible facilities who request such services.

(7) "Eligible facilities" means all approved campuses and instructional centers of all public universities, public community colleges, area technical centers, public elementary schools, middle schools, and high schools, including school administrative offices, public libraries, teaching hospitals, the research institute described in s. 240.512, and rural public hospitals as defined in s. 395.602. If no rural public hospital exists in a community, the public health clinic which is responsible for individuals before they can be transferred to a regional hospital shall be considered eligible.

History.—s. 31, ch. 95-403.

364.509 The Florida Distance Learning Network; creation; membership; organization; meetings.—

(1) It is the intent of the Legislature to establish a coordinated system for cost-efficient advanced telecommunications services and distance education to:

(a) Increase student access to education.

(b) Maximize the use of advanced telecommunications services and their application to provide affordable distance education.

(c) Promote interagency cooperation and promote partnerships.

(d) Secure any available federal or private funds and other resources in support of advanced telecommunications services and distance education.

(e) Coordinate all advanced telecommunications services and distance education resources to maximize return on investment with the goal of creating a financially independent, self-supporting, statewide resource for advanced telecommunications services and distance education.

(2) The Florida Distance Learning Network is hereby created for all the purposes created by the provisions of this chapter or laws amendatory hereof.

(3) The Florida Distance Learning Network is established with the necessary powers to exercise responsibility for statewide leadership in coordinating, enhancing, and serving as a resource center for advanced telecommunications services and distance learning in all public education delivery systems. The Florida Distance Learning Network shall be governed by a board of directors which shall consist of the following members:

(a) The Commissioner of Education or the commissioner's designee.

(b) The Chancellor of the State University System or the chancellor's designee.

(c) The executive director of the State Community College System or the executive director's designee.

(d) The Secretary of Management Services or the secretary's designee, who shall represent the interests of all state agencies.

(e) The President of the Independent Colleges and universities of Florida or the President's designee.

(f) The Public Counsel or his designee.

(g) A member of the Senate and a representative of the International Brotherhood of Electrical Workers who shall be appointed by the President of the Senate and serve at the pleasure of the President.

(h) A member of the House of Representatives and a representative of the Communications Workers of America who shall be appointed by the Speaker of the House of Representatives and serve at the pleasure of the Speaker.

(i) Four members of the private sector representing the cable telecommunications industry, the local exchange telecommunications industry, and the interexchange industry, two of whom shall be appointed by the Florida Cable Telecommunications Association and two of whom shall be appointed by the Florida Telephone Association.

(j) Two members from the health care community to be appointed by the Governor, one member from a teaching hospital and the other member from a rural hospital.

(k) The State Librarian or his designee.

(4)(a) The Commissioner of Education or the commissioner's designee shall serve as the initial chairperson of the board of directors to serve a term of 4 years. Thereafter, the board of directors shall biennially elect the chairperson from its membership. The board of directors shall designate a secretary-treasurer, who need not be a member of the board of directors. The secretary-treasurer shall keep a record of the proceedings of the board of directors and shall be the custodian of all books, documents, and papers filed with the board of directors, and the minutes of the board of directors.

(b) The board of directors shall meet within 30 days after July 1, 1995, and shall continue to meet at least 4 times each year, upon the call of the chairperson, or at the request of a majority of the membership. The board of directors shall take official action only by consensus.

(c) Members of the board of directors shall serve without compensation, but may be reimbursed for per diem and travel expenses.

History.—s. 31, ch. 95-403.

364.510 Duties of the Board of Directors of the Florida Distance Learning Network.—The duties of the Board of Directors of the Florida Distance Learning Network include, but are not limited to:

(1) Creating and facilitating the implementation of a statewide coordinated system and resource system for cost-efficient advanced telecommunications services and distance education which will increase overall student access to education.

(2) Coordinating the use of existing resources, including, but not limited to, the state's satellite transponder on Telestar 401 (the education satellite), the Sunstar Network, the SUNCOM Network, the Florida Information Resource Network (FIRN), Department of Management Services, Department of Corrections, and the Department of Health and Rehabilitative Services' satellite communication facilities to support a statewide advanced telecommunications services and distance learning network.

(3) Promoting interagency activities that will provide increased access to advanced telecommunication services and to distance education.

(4) Assisting in the coordination of the utilization of the production and uplink capabilities available through Florida's public television stations, eligible facilities, independent colleges and universities, private firms, and others as may be needed.

(5) Seeking the assistance and cooperation of Florida's cable television providers in the implementation of the statewide advanced telecommunications services and distance learning network.

(6) Seeking the assistance and cooperation of Florida's telecommunications carriers to provide affordable student access to advanced telecommunications services and to distance learning.

(7) Brokering and coordinating partnerships for development, acquisition, use, and distribution of distance learning.

(8) By January 1, 1996, the board of directors shall assemble appropriate resources from its own technical staff to develop a needs assessment report which shall be included in the plan describing the overall advanced telecommunications services needs of education, libraries, and teaching and rural hospitals. The needs assessment report shall take into consideration any needs assessment recently conducted by any state agency or eligible facility. Such needs assessment report shall also consider interoperability of different technologies needed for delivery of advanced telecommunications services.

(9) Developing and maintaining a plan for using technology to improve the delivery of and access to education. The plan shall be developed by March 1, 1996.

and be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The plan shall describe what advance telecommunication services shall be delivered, address the needs of all educational and health care delivery systems, and shall include the following:

(a) A component on advanced telecommunications services and on distance learning in which education and health care programs, reports of programs, and accountability data are currently delivered to individuals located in diverse settings, including, but not limited to, eligible facilities, state agencies, community facilities, businesses, and homes. This component must consider existing public and private networks and communications systems and their potential in delivering advanced telecommunications services and distance learning applications.

(b) A component on existing rules and statutes related to the use of technology, including recommendations for consolidation and any modifications necessary to provide a statewide policy framework for using technology and telecommunications in education and health care.

(c) A statewide inventory of state-owned telecommunications receiving and transmitting equipment that could be used to assist with the distance learning network.

History.—s. 31, ch. 95-403.

364.511 Powers of the Board of Directors of the Florida Distance Learning Network.—

(1) In order to enable it to carry out the purposes of ss. 364.506-364.514, the Board of Directors of the Florida Distance Learning Network has the power of a body corporate and shall have the power to:

(a) Secure and administer funding for programs and activities of the Florida Distance Learning Network, from federal, state, local, and private sources and from fees derived from services and materials. The board of directors shall also have the power to solicit, receive, hold, invest, and administer any grant, payment, or gift of funds or property and make expenditures consistent with the powers set forth in ss. 364.506-364.514.

(b) Make and enter into contracts and other instruments necessary or convenient for the exercise of its powers and functions.

(c) Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

(d) Adopt, use, and alter a common corporate seal.

(e) Elect or appoint such officers and agents as its affairs require and allow them reasonable compensation.

(f) Adopt, amend, and repeal bylaws, not inconsistent with ss. 364.506-364.514, for the administration of the affairs of the Florida Distance Learning Network, and the exercise of its corporate powers.

(g) In formal agreement with distance learning providers, acquire, enjoy, use, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

(h) Do all acts and things necessary or convenient to carry out the powers expressly granted in ss. 364.506-364.514.

(i) In conjunction with distance learning providers, recommend to the Legislature policy regarding distance learning program funding and the protection of intellectual property rights.

(j) Coordinate a marketing program statewide, nationally, and internationally, as deemed appropriate.

(k) The Department of Management Services shall manage the state's satellite transponder resources and enter into lease agreements to maximize the use of available transponder time. All revenue realized through the leasing of available transponder time shall be recycled to support the Florida Distance Learning Network.

(l) Promote the development of multimedia courses and educational programs to be delivered through distance learning.

(m) Provide incentives for development of multimedia courses and programs to be delivered through distance learning.

(2) Under no circumstances may the credit of the state be pledged on behalf of the Florida Distance Learning Network.

(3) Nothing in ss. 364.506-364.514 shall be construed to abrogate, supersede, alter, or amend the powers and duties of any state agency, district school boards, community college boards of trustees, the State Board of Community Colleges, or the Board of Regents.

History.—s. 31, ch. 95-403.

364.512 Board of Directors of the Florida Distance Learning Network; executive director.—

The executive director of the Board of Directors of the Florida Distance Learning Network, who may also be designated as secretary-treasurer, shall be appointed by the Commissioner of Education. The executive director is the chief administrative and operational officer of the board of directors and shall direct and supervise the administrative affairs of the board of directors. The executive director:

(1) May contract with or employ legal and technical experts and such other employees, both permanent and temporary, as authorized by the board of directors.

(2) Shall attend all meetings of the board of directors.

(3) Shall cause copies to be made of all minutes and other records and documents of the board of directors and shall certify that such copies are true copies. All persons dealing with the board of directors may rely upon such certifications.

(4) Shall perform other duties as assigned by the board of directors.

History.—s. 31, ch. 95-403.

364.513 Annual report of the Florida Distance Learning Network; audits.—

(1) Prior to December 1 of each year, the Florida Distance Learning Network, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a complete and detailed report setting forth:

(a) Its operations and accomplishments during the fiscal year.

(b) Its marketing and operational plan, including recommendations on methods for implementing and funding distance learning initiatives.

(c) Its assets and liabilities at the end of its most recent fiscal year.

(d) A copy of an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General.

(2) The Auditor General may, pursuant to his or her own authority or at the direction of the Joint Legislative Auditing Committee, conduct an audit of the Florida Distance Learning Network.

History.—s. 31, ch. 95-403

364.514 Educational Technology Grant Program.—

(1) The Educational Technology Grant Program is created to support the development of and provide incentives for technologically delivered educational courses and programs.

(2)(a) The Florida Distance Learning Network shall annually award grants to school districts, area technical centers, community colleges, state universities, and independent institutions eligible to participate in state student assistance programs established in part IV of chapter 240. The board of directors of the corporation shall give priority to cooperative proposals submitted by two or more institutions or delivery systems. The proposals shall include:

1. Information which describes the educational significance of the program or service in addressing state educational priorities.

2. The target population for the program.

3. The program content to be transmitted.

4. The support services to be provided.

5. Provisions to use at least 20 percent of any funds awarded for training both faculty and student learners in the use and application of the products developed.

(b) Programs and courses developed through the grant program shall be marketed statewide and nationwide with a portion of any profits from the sale or use of such programs retained by the developing institutions or systems and a portion reinvested in the grant program for further program development. The distribution of any revenues received shall be determined by formal agreement between the board of directors and the developing institution.

(c) The board of directors shall identify state educational priorities and issue a request for proposals by June 1 in every year in which funds are available for grants. The board shall ensure the quality of the programs and courses produced through the grants and produce an annual status report by March 1 describing the projects funded and accounting for any proceeds.

History.—s. 31, ch. 95-403

364.515 Infrastructure investment.—

(1) Notwithstanding ss. 364.509-364.514, advanced telecommunications services shall be provided to eligible facilities in accordance with the provisions of this section.

(2) In order to be eligible under this act, an eligible facility, or a group of eligible facilities based on geographic proximity, shall submit a technology-needs request to the Division of Communications of the Department of Management Services. The division shall

review the technology-needs request to determine if it conforms to the standards outlined in the State Education Technology Committee's plan. If the technology-needs request does not conform to the plan, then the division shall return the request to the eligible facility or group for modifications. After modification of a technology-needs request it can then be resubmitted by the eligible facility or a group of eligible facilities. A technology-needs request shall be submitted to the division no later than July 1, 1997. Nothing in this section shall prevent the Department of Management Services from grouping eligible facilities technology requests when such grouping would result in the most efficient method to deliver advanced telecommunications services.

(3) Once a technology-needs request or group request has been received and has been determined to meet the standards outlined in the plan, the Department of Management Services shall acquire advanced telecommunications services requested by an eligible facility or group of eligible facilities pursuant to chapter 287. The Department of Management Services shall establish specifications to acquire the advanced telecommunications infrastructure needed to provide advanced telecommunications services. The advanced telecommunications infrastructure used to provide such connections to the eligible facilities shall be provided at no cost in an amount not to exceed \$20,000 per eligible facility. In those instances in which a competitive bid is not received, advanced telecommunications services to be provided over this communication infrastructure shall be priced below commercially available rates for comparable service and less than the statewide average of such services.

(4) Notwithstanding the requirements in subsection (3), in geographic areas where interconnection between entities is the most efficient method of providing advanced telecommunications services, the Department of Management Services may suggest, along with the commission, such interconnection arrangements.

(5) Any entity may submit a bid or proposal in response to the solicitation for services by the Department of Management Services. The Department of Management Services shall award a bid in conformity with chapter 287, and under no circumstances shall the bidder be required to install facilities until the eligible facility is ready to utilize the services. If no bids or proposals are received in response to a solicitation issued by the Department of Management Services, the Department of Management Services shall obtain the name and address from the commission of the carrier of last resort in the territory of the eligible facility and provide that carrier of last resort with a description of the advanced telecommunications services that must be provided. If no bids or proposals are submitted for the provision of advanced telecommunications services to an eligible facility, the telecommunications company serving as the carrier of last resort to such eligible facility shall provide the advanced telecommunications services.

(6) Advanced telecommunications services to be provided by the entity awarded the contract or, if no bid or proposal is received, the carrier of last resort shall be provided within 6 months or at such later date as the eligible facility may specify. In the event that a technology-

needs request is received by July 1, 1997, but is requested not to be completed until after January 1, 1999, the Department of Management Services shall then issue a solicitation closer to the time the advanced telecommunications services are requested. The entities providing advanced telecommunications services pursuant to this chapter shall abide by the same terms and conditions as those eligible facilities requesting such services by January 1, 1999.

(7) Advanced telecommunications services provided pursuant to this part shall not be sold, resold, or otherwise transferred to an ineligible facility.

(8) Nothing in this part shall have an effect on advanced telecommunications services in operation as of the date this part is enacted.

(9) Nothing in this part shall preclude the Department of Management Services from combining an eligible facility with any grouping of qualified subscribers as defined in chapter 282, to create the most cost-effective and efficient access to network services.

History.—s. 31, ch. 95-403.

364.516 Penalties.—In the event that the provision of advanced telecommunications services to a request-

ing eligible facility pursuant to s. 364.515(5) or (6) is not performed by the entity awarded the contract or by a carrier of last resort or within the date specified in the solicitation, except in those instances in which acts of God may have prevented the bidder from completing the contract, the eligible facility or the Department of Management Services may petition the commission for an order enforcing the requirements. The commission shall act upon such petition within 60 days and, in the event the commission finds that the entity that has been awarded the contract or the carrier of last resort has not performed as specified in this part, the commission shall order the entities to perform as required in the contract or by this part. In the event the entity fails to comply with the commission's order within 60 days, the commission shall impose a fine on the bidding company or carrier of last resort of \$25,000 per eligible facility specified in the contract. Any fines collected under this section shall be deposited in the General Revenue Fund to be allocated back to the specific requesting area where the eligible facility is located to implement advanced telecommunications services.

History.—s. 31, ch. 95-403.

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ATTACHMENT B

**FPSC ORDER NO. PSC-95-1592-FOF-TP
ISSUED DECEMBER 27, 1995
DOCKET NO. 950696-TP**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Determination of funding) DOCKET NO. 950696-TP
for universal service and) ORDER NO. PSC-95-1592-FOF-TP
carrier of last resort) ISSUED: December 27, 1995
responsibilities.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

APPEARANCES:

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Incorporated and Contel Cellular of the South

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On behalf of AT&T Communications of the Southern States,
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On behalf of BellSouth Mobility Inc.

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On behalf of the Florida Cable Telecommunications
Association, Inc.

Vicki Gordon Kaufman, Esquire, McWhirter, Reeves,
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On behalf of Florida Interexchange Carriers Association

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-95-1592-FOF-TP
DOCKET NO. 950696-TP
PAGE 2

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On behalf of GTE Florida Incorporated

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On behalf of Intermedia Communications of Florida, Inc.

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On behalf of McGaw Communications of Florida, Inc. and its Florida regional affiliates

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On behalf of MCI Telecommunications Corporation, Inc. and MCI Metro Access Transmission Services, Inc.

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On behalf of Metropolitan Fiber Systems of Florida, Inc.

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On behalf of the Citizens of the State of Florida

J. Phillip Carver, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32302 and Nancy B. White, Esquire, 675 W. Peachtree Street, Suite 4300, Atlanta, Georgia 30375.

On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company

David B. Erwin, Esquire, Young, van Assenderp & Varnadoe, P.A., Post Office Box 1833, Tallahassee, Florida 32302-1833.

On behalf of the Small Company Committee of the Florida Telephone Association

ORDER NO. PSC-95-1592-FOF-TP
DOCKET NO. 950696-TP
PAGE 3

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On behalf of Sprint Communications Company, L.P., Central Telephone Company of Florida and United Telephone Company of Florida

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On Behalf of Teleport Communications Group, Inc.

Peter M. Dunbar and Charles W. Murphy, Esquires, Pennington & Haben, P.A., Post Office Box 10095, Tallahassee, Florida 32302-2095.

On behalf of Time Warner AxS of Florida, L.P. and Digital Media Partners

Robert J. Pierson, Esquire, Michael Billmeier, Esquire, Tracy W. Hatch, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff

**FINAL ORDER DETERMINING APPROPRIATE INTERIM
UNIVERSAL SERVICE/CARRIER OF LAST RESORT MECHANISM**

BY THE COMMISSION:

I.

BACKGROUND

During its 1995 session, the Legislature modified a number of provisions of Chapter 364, Florida Statutes. In addition to allowing incumbent local exchange companies (LECs) to opt for price regulation and authorizing competition by alternative local exchange companies (ALECs), the Legislature created Section 364.025, Florida Statutes, Universal Services. According to Section 364.025(1), Florida Statutes, in pertinent part:

It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local